IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1291 OF 2006

1. Sanam Vimala Joshi]
age 22years, Occ: Household]
2. Sandhya Prakash Yadav]
age 24 years, Occ: Household]
3. Sonia Asgarali Shaikh]
age 22 years, Occ: Household]
4. Kajal Chandu Gupta]
age 21 years, Occ: Household]
5. Muskan Abdulhasan Shaikh]
age 23 years, Occ: Household]
Residing at - White House,]
Sus Road, Pune, at present]
detained in Women Observation]
Centre, Mundhwa, Pune]..Petitioners

versus

The State of Maharashtra]
(through the Officer-in-Charge,]
Chatushringi Police Station,]
Pune]..Respondents

Mr. J. B. Kocheta for the Petitioners.

Dr. F. R. Shaikh, Addl. P.P. for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. A. BOBDE, JJ.

DATE : 21ST JULY, 2006

ORAL JUDGMENT (Per D. G. Deshpande, J.)

1. Heard Counsel for the Petitioners and the learned Additional Public Prosecutor.

2. Five girls have filed this petition in the following background:

3. On 27.4.2006, police raided premises at Pune and rescued the petitioners who were detained for the purpose of prostitution. FIR came to be registered against Raju Appa Patil (Accused No.1) who is not a petitioner and others for different offences under The Immoral Traffic (Prevention) Act, 1956, (for short "the said Act"). The petitioners were produced before the Magistrate on 28.4.2006 and the Magistrate directed that the petitioners be detained in custody. The petitioners then applied to him for releasing them but the Magistrate rejected their prayer on the ground that they be detained till they show their bonafides, and, hence, this petition.

4. Counsel for the petitioners contended that as per the provisions of the said Act, the Magistrate has to hold an enquiry and during that enquiry which he has to complete within three weeks he can detain the petitioners. But, further detention beyond period of three weeks is illegal,

and, therefore, the petitioners are entitled to be forthwith released.

5. The Order of the Magistrate dated 28.4.2006 is as under:

> "These applicants are the victims of present crime. Considering the nature of crime, possibility of the victims to the like crime again. By way precaution they are sent to observation home. Keep this application pending till applicants satisfy their bonafides and their antecedents of family etc."

6. Counsel for the petitioners drew our attention to Section 17 of the said Act, which is relating to **"Intermediate custody of (persons) removed under Section 15 or rescued under Section 16."** This Section prescribes that those persons like petitioners are to be produced before the Magistrate, then under sub section (2) Magistrate has to make an enquiry about correctness of the information, age, character and antecedents of the persons and the suitability of his parents, guardian or husband for taking charge of the person so detained etc. Then sub section (3) empowers the Magistrate to pass orders for the safe custody of the persons while enquiry is going on. But second proviso to sub section (3) provides that no person

shall be kept in custody for the purpose for a period exceeding three weeks from the date of such an order.

7. The learned counsel for the petitioners therefore contended that firstly it was for the Magistrate to hold an enquiry and he committed mistake in placing the burden of proof upon the petitioners to satisfy their bonafides and antecedents of family. In any case, he submitted that the petitioners cannot be detained for a period more than three weeks and detention of the petitioners three weeks after the impugned order dated 28.4.2006 is illegal.

8. The learned APP could not point out any provision, under which the detention beyond three weeks period, could be said to be legal. Therefore, this petition has to be allowed. However, looking to the fact that the Magistrate is empowered to make an enquiry, certain conditions can be imposed upon the Petitioners. We, therefore, pass the following order:

ORDER

(1) The petitioners be released forthwith on their execution of bond in the sum of Rs.5,000/- each with one solvent local surety each in the same amount to the satisfaction of the concerned Magistrate.

(2) Magistrate to complete the enquiry as contemplated under Section 17 of The Immoral Traffic (Prevention) Act, 1956, within two months from today and the Petitioners to remain present before the Magistrate as and when enquiry is held. After the enquiry, if found necessary the Magistrate may pass appropriate orders under the said Act. Petition disposed of.

(3) Parties to act on an copy of this Order duly authenticated by the Registry.

(4) Certified copy expedited.

(D.G. DESHPANDE, J.)

(S.A. BOBDE, J.)